

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
William F. Crowell)	File No.: EB-FIELDWR-15-00019827
)	NAL/Acct. No.: 201632960001
Licensee of Amateur Radio Station W6WBJ)	FRN: 0014454912
Diamond Springs, California)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 17, 2015**Released: December 18, 2015**

By the District Director, San Francisco Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$25,000 against William F. Crowell for intentionally causing interference to other amateur radio operators and transmitting prohibited communications, including music. Amateur radio frequencies are shared and licensees may not monopolize any frequency for their exclusive use. Deliberate interference undermines the utility of the Amateur Radio Service by preventing communications among licensed users that comply with the Commission's Rules. Mr. Crowell's deliberate interference to other users, using voice, noises and music, directly contravenes the Amateur Radio Service's fundamental purpose as a voluntary noncommercial communications service to contribute to the advancement of radio art, expand the existing reservoir of trained operators, technicians, and electronic experts, and continue the amateur's unique ability to enhance international goodwill.

2. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Mr. Crowell, licensee of Amateur Radio Station W6WBJ in Diamond Springs, California,¹ apparently willfully and repeatedly violated Section 333 of the Communications Act of 1934, as amended (Act), and Sections 97.101(d) and 97.113(a)(4) of the Commission's rules (Rules) by causing intentional interference to licensed radio operations and using music as part of his interfering transmissions.²

II. BACKGROUND

3. On August 25, 2015, in response to multiple complaints of interference, primarily from members of the Western Amateur Radio Friendship Association (WARFA),³ agents from the Enforcement Bureau's Western Region (Western Region) used mobile direction finding techniques to identify the source of the radio transmissions on 3908 kHz, the frequency used by the WARFA net. The Commission's High Frequency Direction Finding (HFDF) Center also provided direction finding in locating

¹ Mr. Crowell's current amateur license renewal application was designated for hearing because he "apparently willfully and repeatedly engaged in and continues to engage in unlawful Commission-related activities, including, but not limited to, intentionally causing interference and/or interruption, transmitting music and one-way communications, and using indecent language on amateur frequencies." *William F. Crowell*, Hearing Designation Order, 23 FCC Rcd 1865, 1865, para. 1 (WTB 2008).

² 47 U.S.C. §333, 47 C.F.R. §§ 97.101(d), 97.113(a)(4).

³ See <http://warfa.org/> (last visited Nov. 21, 2015). According to its website, the WARFA's motto is "Communicating With The World Through Friendship" and it operates "[v]ia 3908khz Sunday, Tuesday, and Thursday at 8pm PT (standard or daylight)."

the source of the transmissions. The Western Region agents located the source of the transmissions to Mr. Crowell's residence in Diamond Springs, California. The agents and the HFDF Center monitored the transmissions emanating from Mr. Crowell's station for approximately two hours, beginning at approximately 7:45 p.m. PDT, to coincide with the regular start of the WARFA net at 8:00 p.m. PDT. Throughout those two hours the agents and the HFDF Center heard Mr. Crowell and his station frequently transmit on top of other amateurs attempting to transmit as part of the WARFA net. Mr. Crowell repeatedly interrupted other amateurs using noises, recordings and music, in addition to talking over amateurs affiliated with the WARFA net, so as to not allow them to transmit on the frequency. His transmissions and recordings included racial, ethnic, and sexual slurs and epithets. Mr. Crowell continued these transmissions until the WARFA net ceased its operations, at approximately 9:35 p.m. PDT. Mr. Crowell then ceased his transmissions.

4. On August 27, 2015, the Western Region agents and the HFDF Center again monitored Mr. Crowell's operations and located transmissions to his residence. Beginning prior to WARFA net operations at approximately 8:00 p.m. PDT and continuing until approximately 9:30 p.m. PDT, the agents and the HFDF Center heard Mr. Crowell and his station frequently interrupt other amateurs by talking over others and using noises, recordings and music, often to not allow others to transmit on the frequency. These transmissions also included racial, ethnic, and sexual slurs and epithets. Mr. Crowell's transmissions again ceased when the WARFA net ceased its operations for the night. The next day, Western Region agents conducted an inspection of Mr. Crowell's station, and warned him that his transmissions were not in accord with good amateur practice and violated the Communications Act and the Rules. Mr. Crowell acknowledged that he was transmitting the night before, that he transmits on most nights, and that one of the frequencies that he transmits on, at night, is 3908 kHz. Later that day, Mr. Crowell sent an email to the San Francisco Office District Director concerning the transmissions at issue, including recordings, stating that transmitting recordings was not a violation of the Rules and that he had no intention of stopping such transmissions.⁴ On August 30, 2015, the HFDF Center monitored 3908 kHz, beginning at 8:00 p.m. PDT and observed Mr. Crowell's station again transmitting on top of other amateurs, appearing to frequently interrupt them using noises, recordings and other transmissions, often to not allow others to transmit on the frequency. The transmissions continued to include racial, ethnic, and sexual slurs and epithets.

III. DISCUSSION

5. We find that Mr. Crowell apparently willfully and repeatedly violated Section 333 of the Act and Sections 97.101(d) and 97.113(a)(4) of the Rules by intentionally causing interference to other amateur radio operators and transmitting prohibited communications and emissions, including music.⁵ Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁸

⁴ E-mail from William Crowell to David Hartshorn, District Director, San Francisco Office, Western Region, Enforcement Bureau, FCC (Aug. 28, 2015, 11:31 PDT) (On file in EB-FIELDWR-15-00019827).

⁵ 47 U.S.C. § 333, 47 C.F.R. §§ 97.101(d), 97.113(a)(4).

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) (continued....)

and the Commission has so interpreted the term in the Section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹¹

A. Causing Intentional Interference to Licensed Communications

6. We find that the evidence in this case is sufficient to establish that Mr. Crowell willfully and repeatedly violated Section 333 of the Act and Section 97.101(d) of the Rules. Section 333 of the Act states that “[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any stations licensed or authorized by or under the Act or operated by the United States Government.”¹² The legislative history for Section 333 of the Act identifies willful and malicious interference as “intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations.”¹³ Section 97.101(d) of the Rules states that “[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.”¹⁴

7. On August 25 and 27, 2015, Western Region agents located the source of interference to the WARFA net’s operation on 3908 kHz to the address of record for Mr. Crowell’s amateur station, W6WBJ. The agents, and the HFDF Center, heard Mr. Crowell’s amateur radio station intentionally interfering with other amateur licensees by transmitting on top of other amateurs attempting to transmit as part of the WARFA net and repeatedly interrupting other amateurs using noises, recordings and music, so as to not allow them to transmit on 3908 kHz. During the two nights of monitoring 3908 kHz, between 7:45 P.M. and 9:45 p.m. PDT, the agents and the HFDF Center observed at least a dozen instances per night, lasting from thirty seconds to at least four minutes each, of Mr. Crowell intentionally transmitting on top of and repeatedly interrupting other amateurs on the WARFA net.¹⁵ Mr. Crowell also used music and other sounds to interfere with other amateurs, including recordings. During an inspection of his station, Mr.

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... As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law.”).

⁹ See, e.g., *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹² 47 U.S.C. § 333.

¹³ H.R. Rep. No. 101-316, at 8 (1989).

¹⁴ 47 C.F.R. § 97.101(d). See 47 C.F.R. § 97.101(a) (stating that “each amateur radio station must be operated in accordance with good engineering and good amateur practice”).

¹⁵ The agents and the HFDF Center observed Mr. Crowell repeatedly making disparaging remarks about the WARFA net and its members, and observed him stating that because of the “enemies” of the WARFA net, the net will “get totally jammed out if [it] tr[ies] to take check ins from the west coast.”

Crowell acknowledged to Western Region agents that he operates on 3908 kHz, along with other frequencies, on most nights, and that he was transmitting the evening of August 27. The agents warned Mr. Crowell that his transmissions violate the Communications Act and the Commission's Rules. Mr. Crowell asserted both orally during the inspection and in writing that playing recordings did not violate the Rules, and that he would continue to operate his amateur station as he had been doing. On August 30, the HFDF Center observed Mr. Crowell using his amateur station to engage in the same types of intentional interfering transmissions during the meeting time for the WARFA net. We find that Mr. Crowell's transmissions were deliberate acts to prevent other amateur radio operators from conducting legitimate communications.¹⁶ Based on the evidence before us, we find that Mr. Crowell apparently willfully and repeatedly violated Section 333 of the Act and Section 97.101(d) of the Rules by intentionally interfering with other licensed amateur radio communications.

B. Transmitting an Unauthorized Emission

8. The evidence in this case also is sufficient to establish that Mr. Crowell violated Section 97.113(a)(4) of the Rules. Section 97.113(a)(4) of the Rules states that "[n]o amateur station shall transmit . . . [m]usic using a phone emission except as specifically provided elsewhere in this section."¹⁷ On August 25 and 27, 2015, Western Region agents monitored Mr. Crowell's transmissions for approximately two hours each night and heard multiple instances of Mr. Crowell transmitting music. The Western Region agents located the source of these transmissions to Mr. Crowell's residence, and warned Mr. Crowell that his transmissions violated the Rules during the inspection of his station on August 28. Mr. Crowell asserted both orally during the inspection and in writing that playing recordings did not violate the Rules, and that he would continue to operate his amateur station as he had been doing. Based on the evidence before us, we find that Mr. Crowell apparently willfully and repeatedly violated Section 97.113(a)(4) of the Rules by transmitting unauthorized emissions.

C. Proposed Forfeiture

9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.¹⁸ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Crowell of up to \$16,000 for each day of a continuing violation, up to a statutory maximum of \$122,500 for a single act or failure to act.¹⁹ In exercising our forfeiture authority, we

¹⁶ Mr. Crowell's actions directly contravene amateur radio service's "fundamental purpose as expressed in the following principles: (a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications. (b) Continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art. (c) Encouragement and improvement of the amateur service through rules which provide for advancing skills in both the communication and technical phases of the art. (d) Expansion of the existing reservoir within the amateur radio service of trained operators, technicians, and electronics experts. (e) Continuation and extension of the amateur's unique ability to enhance international goodwill." 47 C.F.R. § 97.1.

¹⁷ 47 C.F.R. § 97.113(a)(4).

¹⁸ 47 U.S.C. § 503(b).

¹⁹ See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(7). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See

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must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁰ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.²¹ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.²²

10. Section 1.80 of the Rules set a base forfeiture of \$7,000 for interference, and \$4,000 for unauthorized emissions.²³ We retain the discretion, however, to issue a higher or lower forfeiture than provided in the *Forfeiture Policy Statement* or to apply alternative or additional sanctions as permitted by statute, subject to the statutory cap.²⁴ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁵ On August 25 and 27, 2015, Western Region agents observed Mr. Crowell causing intentional interference to other licensed amateur operators, using voice, noises, music, and recordings, including sexual, racial, and ethnic slurs and epithets. We propose a forfeiture of \$11,000 for each day of the interference and unauthorized emissions observed by the agents. Mr. Crowell was warned about his operation by Western Region agents but Mr. Crowell continued to interfere with the WARFA net two days later. Thus, we find that an upward adjustment in the forfeiture amount of \$3,000 is warranted.²⁶ After applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$25,000, for which Mr. Crowell is apparently liable.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, and 1.80 of the Rules, William F. Crowell is hereby **NOTIFIED** of this **APPARENT**

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Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); *see also* *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases).

²⁰ 47 U.S.C. § 503(b)(2)(E).

²¹ 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

²² *Id.*

²³ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁴ 47 C.F.R. § 1.80(b)(8), Note (“The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by statute.”).

²⁵ 47 U.S.C. § 503(b)(2)(E).

²⁶ *See Robert Brown*, Memorandum Opinion and Order, 27 FCC Rcd 6975 (Enf. Bur. 2012), *aff’g*, Forfeiture Order, 26 FCC Rcd 6854 (Enf. Bur. 2011), *aff’g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated an unlicensed radio station after receiving a warning that such action violated the Act and Rules).

LIABILITY FOR A FORFEITURE in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violations of Section 333 of the Act and Sections 97.101(d), and 97.113(a)(4) of the Rules.²⁷

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, William F. Crowell **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.²⁸

13. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. William F. Crowell shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/ NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁰ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.³¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, San Francisco Office, 5653 Stoneridge Drive, Suite

²⁷ 47 U.S.C. §§ 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 1.80, 97.101(d), and 97.113(a)(4).

²⁸ 47 C.F.R. § 1.80.

²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁰ See 47 C.F.R. § 1.1914.

³¹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

105, Pleasanton, California, 94588-8543, and include the NAL/Acct. No. referenced in the caption. The statement must also be e-mailed to WR-Response@fcc.gov.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to William F. Crowell at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David K. Hartshorn
District Director
San Francisco Office
Western Region
Enforcement Bureau